

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 23-11428-RGS

TIMOTHY KOSTKA,
Plaintiff

v.

MICHAEL RODRIGUES,
Respondent

ORDER ON REPORT AND RECOMMENDATION
OF THE MAGISTRATE JUDGE

September 4, 2024

STEARNS, D.J.

Because I cannot improve on Magistrate Judge Levenson's masterful analysis of the pleadings and his conclusions that the plaintiff: (1) has identified no conflict in the decision of the Supreme Judicial Court (SJC) affirming petitioner's conviction and any controlling precedent of the United States Supreme Court;¹ and (2) that the SJC reasonably determined that there was no error, particularly error of a prejudicial nature, in the prosecutor's closing argument. Consequently, the Recommendation is

¹ Like the Magistrate Judge, I note that petitioner's arguments regarding an alleged late-production discovery violation are based on state rules of criminal procedure and not federal constitutional law.

ADOPTED, the petition for Writ of Habeas Corpus is DENIED with prejudice.² The Clerk will enter judgment for the Respondent and close the case.³

SO ORDERED.

/s/ Richard G. Stearns
UNITED STATES DISTRICT JUDGE

² Kostka filed a timely Objection to the Magistrate's Report and Recommendation but on a careful reading the Objection does no more than repeat the arguments previously presented to the Magistrate Judge.

³ Petitioner is advised that any request for the issuance of a Certificate of Appealability pursuant to 28 U.S.C. § 2253 of the court's Order denying his motion for Writ of Habeas Corpus, is also DENIED, the court seeing no meritorious or substantial basis supporting an appeal.